

With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. See 86 Ill. Adm. Code 130.550. (This is a GIL.)

April 26, 2006

Dear Xxxxx:

This letter is in response to your letter dated April 12, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

TAXPAYER respectfully requests a determination from the Illinois Department of Revenue, Legal Services Office (hereinafter referred to as 'the Department' or 'the State') as to the administration of your jurisdiction's sales tax in consideration of the following facts and circumstances. Your office entertained a similar request on behalf of TAXPAYER (a STATE corporation) approximately two years ago. Please note that the current request is submitted on behalf of TAXPAYER2 (a STATE2 corporation), which is a different corporate entity that will be registering as such.

Issue

Under the proposed tax reporting process as outlined below, may TAXPAYER collect and remit sales taxes, which are received by consultants when making retail sales to home party participants, directly to your jurisdiction?

Facts

TAXPAYER is a multi-level marketing organization which markets and sells decorative crafts and paint kits. Taxpayer utilizes independent consultants to market painting and crafts products to the general public. The sales consultants receive training in the use of

these products. These consultants are independent contractors and are not employees of TAXPAYER.

The consultants purchase a starter kit to be used for training, presentation and/or teaching purposes. Once trained, the consultants participate in home parties to demonstrate painting and craft products. During the parties, or immediately thereafter, the party participants place orders for merchandise from the consultants. The retail price of the merchandise includes a markup, which generates a profit for the consultants. The consultants then place orders through Taxpayer for such merchandise at a wholesale price and the goods are subsequently drop shipped to the consultants for delivery to the respective party participants.

Current Tax Reporting Process

The consultants are acting as dealers making retail sales and should register for sales and use tax purposes with the respective taxing authorities. When purchasing merchandise from TAXPAYER for resale to party participants, the consultants would present Taxpayer with an exemption certificate relieving Taxpayer of the obligation to collect sales tax on the wholesale sales. However, the consultants would then be required to collect sales tax on the retail sale of such merchandise to the party participants.

Although the majority of TAXPAYER's sales to the consultants are exempt as wholesale sales, some retail sales do occur, such as the starter kits sold to consultants for their own use and consumption. Therefore, both TAXPAYER and the consultants have responsibility for billing and collecting sales tax at each level of the sale of merchandise, which requires both to file sales and use tax returns in the states in which they do business.

Proposed Tax Reporting Process

When the consultants purchase merchandise from TAXPAYER for resale to the party participants, TAXPAYER will bill the consultants for sales tax on the retail price of the goods, rather than the wholesale price. To facilitate the appropriate application of tax, the invoices to the consultants for the merchandise ordered from Taxpayer may reflect both the wholesale and retail prices for such merchandise with the appropriate tax calculated on the retail price. The total invoice amount will reflect the wholesale price for the merchandise plus sales tax based upon the retail price. The consultants will continue to bill its party participants for the sales tax on the retail price of their order, but they will retain the sales tax as reimbursement for the tax already paid to TAXPAYER.

Therefore, TAXPAYER will be solely responsible for filing sales and use tax returns and remitting the appropriate sales tax collected from the consultants. The consultants will have no sales and use tax filing responsibility.

Conclusion

In light of the tremendous compliance burden created by the current tax reporting process, we believe that the proposed tax reporting process will ease the administrative burden of complying in your jurisdiction by centralizing the sales tax remittance function at the Taxpayer level. This process also affords State the assurance that proper tax

compliance will occur and all sales tax dollars owed will be remitted, thereby reducing your administrative costs related to sales tax compliance.

We understand that the State of Illinois has an Agency Agreement that is appropriate for this situation. We further understand that this request is consistent with the provisions of 86 Ill. Adm Code 130.550.

If the Department has any questions or requires any additional information from Taxpayer in order to render an opinion on this issue, please contact me directly. Thank you in advance for your cooperation and attention to this matter.

DEPARTMENT'S RESPONSE:

Information concerning the "Filing of Returns for Retailers by Suppliers Under Certain Circumstances" may be found at 86 Ill. Adm. Code 130.550. This regulation explains that manufacturers, importers or wholesalers can enter into an "agency agreement" with the Department, whereby they register, file returns and remit Retailers' Occupation Tax on behalf of their local distributors. Please note that such arrangement must be accepted by the Department and is subject to any written objections of the retailers that would be affected. The Agency Agreement (RR-80) may be used to obtain approval of such an arrangement with the Department.

Under this type of agreement, the manufacturers, importers or wholesalers sell products to local distributors and collect tax from the distributors based upon the selling price to the ultimate consumers. The applicable tax is not based upon the sale to the local distributors. The appropriate tax must be collected for the sale to the distributors' ultimate customers, which includes State and any applicable local tax. In general, the determination of any local tax liability will depend on the location where the purchase order is accepted from the ultimate customer. For example, see 86 Ill. Adm. Code 270.115.

When manufacturers, importers or wholesalers operate under this type of agency agreement, the local distributors need not register, file returns or remit taxes since the manufacturers, importers or wholesalers have agreed to this responsibility. The local distributors should, however, retain a copy of the agreement. If they fail to provide such documentation upon demand by the Department, they will be required to register, file returns, and remit the appropriate amount of tax directly to the Department. Distributors who prefer to register and remit their own taxes may opt out of the agency agreement.

Taxpayers may acquire form RR-80 (Agency Agreement) by contacting the Department's Central Registration Unit, attention Manager, located at Illinois Department of Revenue, 101 West Jefferson, Springfield, Illinois 62702.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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